

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

**IN THE MATTER OF:**

**IOWA GAS GROUP, INC.,  
ELITE FUEL TWO, INC., AND  
ISH OBEROI, INDIVIDUALLY**

**MARK KRAMER AND M K  
FUELTIME, LLC.**

**UST NO. 200000017, 825 Milwaukee, New  
Hampton, IA**

**ADMINISTRATIVE ORDER  
NO. 2010-UT-17**

**To: Ish Oberoi  
9 Elk Run Rd.  
Waterloo, IA 50703**

**Elite Fuel Two, Inc.  
Reg. Agent, Ish Oberoi  
9 Elk Run Rd.  
Waterloo, IA 50703**

**Iowa Gas Group, Inc.  
Reg. Agent, Shital N. Mehta  
438 New York Lane  
Elk Grove Village, IL 60007**

**Mark Kramer and  
MK Fueltime, LLC.  
PO Box 263  
625 Klenske Ave.  
New Hampton, IA 50659**

**I. SUMMARY**

This administrative order (order) requires Iowa Gas Group, Inc., Elite Fuel Two, Inc. and Ish Oberoi to pay an administrative penalty of \$6,000 within 60 days of receipt of this order unless the order is appealed as provided in Division VII below. The penalty is assessed for operating underground storage tanks (USTS) at the referenced facilities without an approved form of financial responsibility in violation of Iowa law.

The order requires MK Fueltime, LLC. to immediately retain an Iowa Department of Natural Resources (Department) certified compliance inspector and complete a delinquent 2008-2009 third party UST compliance inspection. The order assesses a separate penalty of \$4,000 against all the named parties for failure to complete this compliance inspection prior to December 31, 2009.

Any questions regarding this order should be directed to:

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### **Relating to technical requirements:**

Paul Nelson, Environmental Specialist  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8779

### **Relating to legal issues:**

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/242-5817

## **II. JURISDICTION**

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapters 567 Iowa Administrative Code (IAC) 135 and 136. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

## **III. STATEMENT OF FACTS**

1. Waterloo Real Estate, Inc. acquired title to property located at 825 Milwaukee, New Hampton, Iowa by deed recorded on December 26, 2007. Waterloo Real Estate, Inc. is an Illinois corporation. Paul Ghuman is president and upon information and belief a principal stockholder. Waterloo Real Estate, Inc. sold the property to Elite Fuel Two, Inc. (Elite Fuel 2) by deed recorded December 28, 2007.
2. Elite Fuel 2 sold the property to Mark Kramer by deed recorded October 7, 2008. Mark Kramer sold the property to MK Fuel Time, LLC (MK) by deed dated July 27, 2009. MK is the current property owner. Mark Kramer has been the UST owner from October 7, 2008 to July 27, 2009 and MK has been the UST owners from July 27, 2009 to the present.
3. Elite Fuel 2 is an Illinois corporation registered with the Iowa Secretary of State and doing business in Iowa. Ish Oberoi is president of Elite Fuel 2 and upon information and belief is a principal stockholder in Elite Fuel 2. Ish Oberoi is also the president and upon information and belief the principal stockholder in Elite Fuel One, Inc., Elite Fuel Three, Inc., Elite Fuel Four, Inc., Elite Fuel Five, Inc., Elite Fuel Six, Inc. and Elite Fuel Seven, Inc. and Elite Fuel Eight, Inc. all of which are Illinois companies registered with the Iowa Secretary of State (except Elite Fuel

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Eight, Inc) and doing or formerly doing business in Iowa. Upon information and belief, all of these corporations have owned or operated UST facilities.

4. At all times relevant to this order, Ish Oberoi has been the person in control of, or having responsibility for, the daily operation of the USTS at this location. He has been the primary contact person responsible for maintaining compliance with the regulatory requirements as stated in this order.

5. At all times relevant to this order, there have been three 12,000 gallon and one 8,000 gallon petroleum USTS at this location.

6. Iowa Gas Group, Inc. (Iowa Gas) by signature of its attorney registered with the Department as the owner of the petroleum USTS at this location on Department registration form dated January 28, 2008. Paul Ghuman was identified as the authorized representative of Iowa Gas. Mr. Ghuman is president of Iowa Gas and upon information and belief a principal stockholder. The registration form did not identify any separate entity functioning in the capacity as an operator or lessee of the USTS.

7. Department records show that PMMIC, an Iowa insurance company, issued an insurance certificate covering the USTS at this location identifying Waterloo Real Estate, Inc. as the named insured with effective dates of March 7, 2007 through March 6, 2008. This policy was cancelled effective March 6, 2008. This policy was not an approved form of insurance for these USTS since Waterloo Real Estate, Inc. was neither an owner nor an operator after December 28, 2007.

8. PMMIC issued a certificate of insurance on the USTS at this location identifying "Elite Fuel Three" as the named insured. The effective dates of the policy were June 6, 2008 to June 5, 2009. The policy established a new "retroactive date" of June 6, 2008. PMMIC cancelled this policy effective June 5, 2009. Therefore, there was a lapse in insurance coverage from December 28, 2007 to June 6, 2008.

9. Elite Fuel Three, Inc. has never registered as either an owner or operator of USTS at this location. The USTS at this location had no approved form of financial responsibility during the period of December 28, 2007 to June 5, 2008. The PMMIC policy issued in the name of "Elite Fuel Three" was not an approved insurance policy because "Elite Fuel Three" was neither an owner nor operator of the USTS as required by law. Even if "Elite Fuel Three" could be established to have been an operator, there was still a lapse of financial responsibility coverage from the PMMIC cancellation date of March 6, 2008 until the new PMMIC policy issued to "Elite Fuel Three" with an effective date of June 6, 2008.

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10. Upon information and belief, the owner and operator of this site continued to accept fuel into these USTS after the March 6, 2008 PMMIC insurance cancellation date until a new PMMIC insurance policy was issued to Elite Fuel Three effective June 6, 2008.

11. The Department sent a letter dated May 13, 2008 addressed to "Paul Ghuman, Elite Fuel Seven, LLC" at 902 S. Roselle Rd., Schaumburg, IL notifying these parties that PMMIC UST insurance on this site had been cancelled in March 2008. The notice prohibited any further fuel deliveries and directed the parties to cease operation until proof of financial responsibility is provided. The letter stated that "your company representative, Ish" was notified to cease operation the prior week.

12. On April 28, 2009, the Department received an annual tank fee invoice identifying MK as the current property owner, UST owner and UST operator/lessee. Attached to the invoice was a certificate of insurance issued by Zurich identifying "MK Fuel Time, LLC" as the named insured with effective coverage dates of October 7, 2008 to October 7, 2009. The policy was renewed for the period October 7, 2009 to October 7, 2010.

13. As of this date, no third party compliance inspection of this UST facility as required by Department regulations has been completed for the 2008-2009 compliance period. There also was no third party compliance inspection for this UST facility prior to December 31, 2007 as required by Department regulations.

### **IV. CONCLUSIONS OF LAW**

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in chapters 567 IAC 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

2. Iowa Code section 455B.471(6) defines "owner" of USTS. Elite Fuel 2 has been an owner as defined since it acquired title to the property on December 28, 2007 and therefore responsible for compliance with the terms of this order. It is not clear from the Department records if Iowa Gas mistakenly registered as the UST owner on January 28, 2008 but until proven

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otherwise, the Department finds that it is also an UST owner and responsible for compliance with the terms of this order.

3. Mark Kramer was a property owner and UST owner from October 8, 2008 to July 27, 2009. MK was a property owner and UST owner from July 27, 2009 to the present. As UST owners, they are responsible for violations occurring during their ownership and responsible for compliance with applicable terms of this order.

4. Iowa Code section 455B.471(5) defines an "operator" of USTS as " . . . a person in control of, or having responsibility for, the daily operation of the underground storage tank." Elite Fuel Three, Inc. was identified on the PMMIC policy as a named insured for the period June 6, 2008 to June 5, 2009 but never registered with the Department as an operator. Rather, Elite Fuel 2 was the property owner and presumably the operator as well. Therefore, it is unclear if Elite Fuel Three, Inc. was ever an operator. Until documentation is provided to prove that it operated the USTS, the Department finds that Elite Fuel Three, Inc. was not an operator and Elite Fuel 2 was the operator.

5. Ish Oberoi in his capacity and president of Elite Fuel 2 was an operator as defined in Iowa Code section 455B.471(5) and responsible for compliance with the terms of this order.

6. Owners and operators of USTS must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. 567 IAC 136.22.

7. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. 567 IAC 136.20. They must submit proof of financial responsibility to the Department upon request. 567 IAC 136.19. If insurance is the chosen method of financial assurance, owners and operators must provide proof in the form of a certificate of insurance or an endorsement worded exactly as provided in Commission rule 567 IAC 136.8. The insured party must be either the UST owner or operator.

8. The PMMIC policy naming Waterloo Real Estate, Inc. as an insured was not effective after December 28, 2007 when it sold the property to Elite Fuel 2. Assuming Elite Fuel Three, Inc. actually operated the USTS, the PMMIC policy naming Elite Fuel Three, Inc. as the named insured had a start date of June 6, 2008. Elite Fuel 2 and Iowa Gas were owners of the USTS during this period of December 28, 2007 until June 6, 2008 in which there was a lapse in insurance coverage. Ish Oberoi was an operator during this period. Therefore, the Department finds that all three parties are jointly and severally responsible for failure to maintain continuous financial responsibility during this period of time and for operating the USTS during this period of time in which there was not an approved financial responsibility mechanism.

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9. PMMIC had an UST policy covering this location in effect from June 6, 2008 to June 5, 2009 with the named insured identified as "Elite Fuel Three, Inc." Until documentation is supplied to demonstrate that Elite Fuel Three, Inc. was in fact an operator, the conclusion is that it was not and therefore, the PMMIC policy was not an effective financial responsibility mechanism in effect from June 6, 2008 until MK presumably became an UST owner and took out a policy with Zurich effective October 7, 2008.

### **Compliance Inspection Violation**

10. UST owners and operators are required to retain a Department certified compliance inspector and conduct a compliance inspection by December 31, 2007. A compliance inspection must then be completed within the two year period from January 1, 2008 to December 31, 2009 with at least a six month separation between the prior compliance inspection. After the biennial inspection for the period 2008-2009, all subsequent inspections must be completed within 24 months of the prior inspection with a minimum separation of 6 months. See 135.20(1). Elite Fuel 2, Elite Fuel Three, Inc., Mark Kramer and MK were all owners or operators in 2008 and 2009 and failed to complete a compliance inspection.

## **V. ORDER**

THEREFORE, you are ordered to comply with the following provisions in order to redress violations:

1. Elite Fuel 2, Iowa Gas and Ish Oberoi are jointly and severally responsible to pay an administrative penalty of \$6,000 for the financial responsibility violations by check payable to the Iowa Department of Natural Resources within 60 days of receipt of this order unless the order is appealed as provided in Division VII below.
2. Elite Fuel 2, Iowa Gas, Ish Oberoi, Mark Kramer and MK are jointly and severally responsible to pay a \$4,000 penalty for the failure to conduct a compliance inspection.
3. MK is required to immediately retain a Department certified compliance inspector and complete the required 2008-2009 compliance inspection no later than July 2, 2010 and submit a final inspection report within the required 60 days of the initial inspection.

## **VI. PENALTY**

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1. Iowa Code § 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this order.

2. Iowa Code § 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to that chapter. 567 IAC chapter 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

**ECONOMIC BENEFIT:** All the parties but Mark Kramer and MK have avoided the cost of maintaining continuous financial responsibility during the period they illegally operated the USTS without an approved form of financial responsibility. An annual policy for 4 USTS is in the range of \$2,000. Under the existing facts, it is difficult to determine the exact number of months without insurance but it is close to a year. For this factor, \$2,000 is assessed jointly against Elite Fuel 2, Iowa Gas and Ish Oberoi.

**GRAVITY:** The failure to maintain continuous financial responsibility is a major violation since it jeopardizes the viability of a claim in the event that a release is discovered or suspected outside the coverage period. In this case, the March 2008 cancellation by PMMIC removed the earlier retroactive date and a new policy effective June 6, 2008 established a new retroactive date of June 6, 2008. The Waterloo Real Estate, Inc. policy was not a valid financial responsibility mechanism after December 28, 2007 since it no longer had any UST ownership or operational status. The failure to have the June 2008 PMMIC policy issued in the name of the actual UST owner or operator as opposed to "Elite Fuel Three" renders it invalid unless documentation establishes that Elite Fuel Three, Inc. was an actual operator. In any event, Elite Fuel 2, Iowa Gas, and Ish Oberoi continued to operate after the PMMIC policy was ineffective as of December 28, 2007 as well as after the PMMIC cancellation date of March 6, 2008. For this factor, \$3,000 is assessed jointly and severally against Elite Fuel 2, Iowa Gas and Ish Oberoi.

The failure to conduct a third party compliance inspection in 2008-2009 is a major violation since it undermines a primary leak prevention regulatory tool. It is a separate and distinct violation from the financial responsibility violation. All the named parties were either owners or operators during 2008 and 2009. For this factor, \$2,000 is assessed jointly and severally against, Elite Fuel 2, Iowa Gas, Ish Oberoi, Mark Kramer and MK.

**CULPABILITY:** Elite Fuel 2, Iowa Gas, and Ish Oberoi operate numerous UST facilities in Iowa and other states. They knew or should have know of the financial responsibility

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requirements. They operated these USIS even after being notified that it was illegal to operate without an approved financial responsibility mechanism. For this factor, \$3,000 is assessed jointly and severally against Elite Fuel 2, Iowa Gas and Ish Oberoi.

All the named parties knew or should have know of the third party compliance inspection requirements since this is the second biennial compliance period and the Department sent numerous notices to all registered facilities in 2007, 2008 and 2009. For this factor, \$2,000 is assessed jointly and severally against all the named parties.

**Total Penalty:** Because the total penalty assessment for this order exceeds the \$10,000 statutory limit, the Department is allocating \$6,000 of the total penalty jointly and severally against Iowa Gas, Elite Fuel 2 and Ish Oberoi. Iowa Gas, Elite Fuel 2, Ish Oberoi, Mark Kramer and MK are jointly and severally liable for an assessment of \$4,000 for the compliance inspection violation.

### **VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.476, and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named partes may file a written notice of appeal to the Commission within 30 days of receipt of this order. The party should file this notice of appeal with the Director of the Department, and must identify the specific portion or portions of this order subject to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code chapter 17A and chapter 561 IAC 7.


### **VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty.



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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of

June, 2010

Named parties, FO 1, E. Douskey, V. I.